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Estate Planning Insights

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It's Halloween!

The Perfect Time to Look at Some "Scary Things"!

Background. Before I report on some "scary things," I want to remind everyone that there are basically four methods for transferring assets at death. If you actually study all four transfer methods, you will see that each transfer method has *both* pros and cons. Rather than getting bogged down in the details of the four transfer methods, which we have discussed many times before, I have attached a separate Addendum to this newsletter that discusses the four transfer methods in more detail. Just keep in mind that it is harder to have a "coordinated" and "comprehensive" estate plan if you are using multiple methods to transfer your assets when you die. In addition, be aware that some transfer methods are more limited in terms of addressing contingencies in advance, providing for distributions to trusts created on your death, and creating a customized and/or tax-advantaged estate plan.

Some "Scary Things" Relating to Estate Planning.

<u>Scary Thing 1</u>. A 94 year old widower ("John") with three children (one son and two daughters) added a "Transfer on Death" (TOD) arrangement to his $3.8 million brokerage account several months before he died. John did this at the urging of his financial advisor "to avoid probate." Note that John already had a valid Will that named his three children as the equal beneficiaries of his assets distributable pursuant to his Will (i.e., his "probate assets"). In addition, John's Will included a "per stirpes" provision to cover the possibility that a child might predecease him (i.e., die before him or, possibly, die in a "common disaster" with him). In general terms, if a person doing estate planning uses a *per stirpes* provision with respect to a beneficiary's share, it means that if that beneficiary fails to survive that person, that beneficiary's share will be distributed in equal shares to that beneficiary's children. John's Will also contained "Contingent Trusts" in case any grandchild became entitled to a share of John's probate assets (due to the grandchild's parent [one of John's children] failing to survive John) and was either a minor or otherwise "too young" at the time of John's death to manage his/her inheritance. Unfortunately, John's 70 year old son, David, who had two children, died two weeks before John did. And, unfortunately, the TOD arrangement on John's brokerage account did *not* include "per stirpes" with respect to David's share of that account. Thus, legally, the brokerage account had to be distributed to John's two surviving children, 50-50. John's two surviving daughters wanted David's children to receive what would have been "David's share" of John's brokerage account if the TOD form had been completed correctly. (Hopefully, David's children appreciated the fact that their aunts were willing to do that—that does not always happen in these cases.) One of John's daughters, who had two children of her own, had a taxable estate and asked if what she and her sister wanted to do could be done without tax consequences. Unfortunately, if the surviving daughters each transferred the requisite portions out of their respective shares of the TOD brokerage

account to David's children *in one year*, each of them would clearly be making "taxable gifts" to David's children (gifts having a value exceeding the gift tax annual exclusion amount). *Taxable gifts* must be reported to the IRS in a federal gift tax return (Form 709). That is the legal and tax result of this situation. Making a *taxable gift* (which really means a "reportable gift") does not mean that gift taxes always have to be paid by the "donor" (gift-giver) on that gift. Every person has a lifetime gift tax exemption that can be applied to taxable gifts he/she makes during life. Only after the full amount of that exemption has been exhausted would subsequent gifts trigger gift taxes. In this case, John's daughter with the taxable estate decided to spread out her gifts to David's children over many years, using the gift tax annual exclusion, so that she did not have to use any of her lifetime gift tax exemption amount (which would have reduced her estate tax exemption amount) in order to "fix" the mistake made in this case.

<u>Scary Thing 2</u>. A married woman in her early 70s ("Sally"), who owned a large IRA, decided to name her grandchildren as the primary beneficiaries of her IRA. Her financial advisor helped her prepare the beneficiary designation form to do that. When we met with Sally and her husband several years after she did that to conduct an "estate planning check up," Sally provided an actual copy of the beneficiary designation form on file for her IRA (her husband did that for his IRA, too). That is what every estate planning client should do when meeting with an estate planning attorney, but not all estate planning clients actually do that. In this case, thank goodness Sally did that. Sally's beneficiary designation for her large IRA was "problematic" for two reasons: (i) Sally's IRA was community property, and (ii) nearly all of Sally's grandchildren were still minors at that time. In Texas, a minor is an individual under age 18.

If Sally had died first, with the "problematic" beneficiary designation in effect for her IRA, her husband would have been put in a difficult position. If her husband allowed Sally's IRA to be distributed to the grandchildren per Sally's beneficiary designation form, he would be making a taxable gift of his community property one-half interest in that IRA to the grandchildren on Sally's death. The only real legal choice to avoid that result would have been for Sally's husband to file a lawsuit claiming that Sally's IRA beneficiary designation amounted to "fraud on the community." Obviously, filing a lawsuit was not a desirable option.

When an IRA is community property, the spouse who is the "titled owner" of the IRA should always make sure that he/she names his/her spouse to receive at least 50% of that IRA (in recognition of the spouse's 50% ownership interest in that IRA). In the case of most married couples who have lived in Texas for any length of time, all of their IRAs are likely to be community property. When a married couple is domiciled in Texas, compensation earned by each spouse is community property (compensation is what goes into retirement plans). In addition, if assets are traceable from one community property asset (such as an employee benefit plan) to another community property asset (such as an IRA rollover), the receiving asset is also community property. Further, income earned by all of the assets during the marriage while the couple is domiciled in Texas is community property. This means that, even an account or other asset that "starts out" as one spouse's separate property can become community property over time as "income" (such as dividends and interest) is added to it during the marriage.

Federal law requires an IRA to be titled in just one individual's name. However, Texas is not a "title" state, it is a community property state. Thus, the most that can be gleaned from the title of an IRA (or other asset/account) is the "manager" of that IRA (or other asset/account). Only the manager of an IRA is permitted to complete the beneficiary designation form for that IRA. However, in the case of IRAs that are community property, the spouse who is completing the beneficiary designation form must remember that the spouses own that IRA as community property.

But that was not the only problem with Sally's IRA beneficiary designation. As noted, nearly all of Sally's grandchildren were still minors. No one should ever name a minor as the "outright" (i.e., direct) beneficiary of assets of any type. A minor does not have "legal capacity." That means the minor has no power to manage any assets distributable to him or her. In cases where a minor is inheriting assets *directly*, if the amount is not too large, those funds could be deposited into the registry of the court and, basically, held there, without being invested or managed, until the minor reaches age 18, at which time the 18 year old can claim those funds. However, in the case of larger amounts, usually, if no advance planning is done, the amount distributable to the minor will end up being administered in a court-supervised legal guardianship (or, sometimes, in a court-created management trust with a corporate trustee). A court-supervised guardianship is one of the most expensive proceedings in Texas (and in other states, too). Thus, a lot of the minor's inheritance will get "wasted" due to the numerous ongoing costs of the guardianship proceeding. For that reason, lawyers who are helping clients do estate planning include "Contingent Trusts" (or other types of trusts) in Wills and trust instruments that are designed to receive any assets distributable to a minor (or other young person). In the Will or trust instrument, an older adult relative or a bank or trust company is named as trustee of the trust created for the benefit of the minor (or other young person). One advantage of this approach is that the trust does not have to terminate when the minor reaches age 18. As a famous law professor once said, "If you give an 18 year old liquid assets, he'll drink them!" Thus, if the trust is not intended to be a lifetime trust, most people who create trusts as receptacles for assets distributable to minors (or other young beneficiaries) provide that the trust does not terminate until the particular beneficiary reaches age 25, 30 or 35. Of course, while the trust is in existence, the trustee can make distributions "for the benefit of" the beneficiary, which includes distributions for the beneficiary's health, education, maintenance and support.

Another option that is better than a legal guardianship (but not better than a trust—although, *sometimes it is the only option that certain financial institutions will let you use in their particular IRA beneficiary designation forms or with their particular TOD or POD forms*) is to make sure that any amount to which a minor is entitled is specifically distributable to an adult relative as "custodian" for that minor beneficiary pursuant to the Uniform Transfers to Minors Act. All US states and Washington, D.C., have adopted the Uniform Transfers to Minors Act to enable adults to make gifts to minors, who, as noted, otherwise do not have the ability to manage assets because of their legal incapacity. Jurisdictions vary in regard to the termination age for this type of "custodial arrangement." A custodial account established pursuant to the Texas Uniform Transfers to Minors Act lasts until age 21.

Scary Thing 3. A married couple, both age 70, with a taxable estate, have two responsible adult children, one age 40 and the other age 38. Note that this couple, both retired from successful careers, frequently travel together. Per the couple's estate plan, on the death of the second spouse, most of their net assets (after the payment of estate taxes) will be distributed to separate "Descendant's Trusts," one for the primary benefit of each child and the secondary benefit of that child's children (and grandchildren) while that child is living. Descendant's Trusts last for the lifetime of the "primary beneficiary" (in this case, each child will be the primary beneficiary of his/her Descendant's Trust) and, when the primary beneficiary dies, the assets in that beneficiary's Descendant's Trust will be divided among that beneficiary's descendants in *per stirpes* shares, and distributed to new Descendant's Trusts, and so on. Because of the significant benefits that Descendant's Trusts provide, placing assets into Descendant's Trusts is like creating a "family endowment" that can preserve family assets and provide benefits to family members for many years. Descendant's Trusts provide significant benefits that the couple's children and other

descendants would not otherwise enjoy if the inherited assets were, instead, distributed to the couple's children outright. These benefits include (i) protecting the trust assets from being granted to the child's spouse in a divorce; (ii) protecting the trust assets from being awarded to a plaintiff who obtains a judgment against the child in a lawsuit; (iii) to the extent the parents' respective GST exemption amounts are properly allocated to the trusts, keeping the trust assets out of the child's estate when the child dies and, therefore, being able to avoid estate taxes (and GST taxes) when the child dies on the presumably increased value of the trust assets that are distributable to new trusts for the child's children on the child's death; and (iv) if the child has children (and grandchildren) of his/her own, setting up the possibility of distributing ordinary income earned by the assets owned by the trust (such as dividends and interest) to individuals in low income tax brackets (ordinary income distributed out of a trust like a Descendant's Trust is taxable to the recipient of that income and not to the trust itself). These same benefits will apply to subsequent generations as well because the couple's estate plan continues the Descendant's Trusts for as long as Texas law allows (in general, 300 years per recent legislation).

Both spouses had large pre-tax IRA rollovers, which came from large employee benefit plans they accumulated during their successful careers. Because of the SECURE Act, the couple does not want to leave pre-tax IRAs to their children's Descendant's Trusts, which are designed as "accumulation trusts" and not as "conduit trusts" pursuant to the "RMD Rules" (i.e., the income tax rules applicable to distributions from qualified plans and IRAs). Instead, pre-tax IRAs remaining when the second spouse dies will either be left outright to their children (because of the 10 year rule per the SECURE Act) or to the couple's donor-advised fund (which will avoid both estate taxes and income taxes on that distribution due to the couple's DAF being a charitable entity) or partially to both.

The couple has been systematically converting portions of their pre-tax IRAs to Roth IRAs over the past several years. And while paying the income taxes on those conversions has been painful from a cash flow standpoint, the couple feels that, in the long run, decreasing the size of their pre-tax IRAs and increasing the size of their Roth IRAs would be better for them (no required minimum distributions ["RMDs"] would have to be taken from the Roth IRAs by them during their lives) and would be better for their children and grandchildren, too (Roth IRAs can be left to Descendant's Trusts on the surviving spouse's death and the RMDs from the Roth IRAs can be retained in the Descendant's Trusts without the adverse income tax consequences that would apply in the case of RMDs from pre-tax IRAs that are retained in the Descendant's Trusts). The couple's financial advisor told them that the policy of his wealth management firm is for personnel of the wealth management firm to complete the IRA beneficiary designation forms for all of the wealth management firm's clients. In this case, however, the couple asked their estate planning attorney (Karen Gerstner) to provide the beneficiary designation information to the assistant of the financial advisor, whose job it was to complete the beneficiary designation forms. Here is what was provided to the financial advisor's assistant:

Primary Beneficiary: Spouse (100%)

Contingent Beneficiaries: 50% to Child A's Descendant's Trust

50% to Child B's Descendant's Trust

After the financial advisor's assistant completed the beneficiary designation forms for the couple's Roth IRAs, the couple provided copies of the forms to their estate planning attorney (Karen Gerstner) for her

review. Here is how the financial advisor's assistant had completed the beneficiary designation forms for each spouse's Roth IRA:

Primary Beneficiary: Spouse (100%), per stirpes

Contingent Beneficiaries: 50% to Child A's Descendant's Trust

50% to Child B's Descendant's Trust

The way the financial advisor's assistant completed the beneficiary designation forms for this couple's Roth IRAs completely overrides what this couple wanted! If the spouses had died together in a plane crash during their upcoming trip, their Roth IRAs would have been distributed to their children, in equal shares, *outright and free of trust*, due to the legal effect of including "per stirpes" for the spouse's share. In other words, the couple's Roth IRAs would *not* have been distributed to their children's Descendant's Trusts in equal shares if they had died together, even though that's what the couple wanted in the case where no spouse was living.

Another "Scary Thing": The Corporate Transparency Act. Beginning on January 1, 2024, the Corporate Transparency Act ("CTA") will require a "Reporting Company" (sometimes referred to as an "entity") to disclose to the Financial Crimes Enforcement Network (FinCen), a division of the US Treasury Department, certain information about the entity, the entity's "Beneficial Owners" and, in certain cases, the entity's "Company Applicants." Among other purposes, the CTA was passed to try to enhance US national security, intelligence and law enforcement, to try to reduce and catch money laundering, and to try to reduce and stop the financing of terrorism. [The following is a "30,000 foot overview" of the CTA.]

In terms of the deadline for filing such reports, there is a difference between an entity that is in existence prior to January 1, 2024, and a new entity that is formed on or after January 1, 2024. An entity that is in existence before January 1, 2024, must file its initial report before January 1, 2025. A new entity formed on or after January 1, 2024, must file its initial report within 30 days of formation. A proposed regulation (not yet final) would change that 30 day period to a 90 day period for new entities formed during 2024.

A "Reporting Company" is an entity that is subject to the reporting requirements of the CTA. A Reporting Company will include the following *types* of entities, although certain entities of these types are excluded from reporting as "exempt" (noted below): (i) corporations (both C corporations and S corporations), (ii) limited liability companies (LLCs), (iii) limited partnerships (LPs), (iv) limited liability partnerships (LLPs), and (v) business trusts (such as "Massachusetts Business Trusts"). Personal trusts are excluded from the definition of a *Reporting Company*, but trustees and beneficiaries of personal trusts could be included within the definition of a *Beneficial Owner*.

For the most part, entities that are excluded from the definition of a *Reporting Company* include (but are not limited to) the following: large US operating companies, publicly traded companies, domestic governmental authorities, banks, credit unions, depository institutions, trust companies, broker-dealers, securities and commodities exchanges, registered investment advisors, public utilities, Sarbanes-Oxley registered public accounting firms, charitable organizations and charitable "split interest trusts" (such as charitable remainder trusts and charitable lead trusts). The reason for most of the above exclusions is that these types of entities are already subject to significant reporting requirements.

An important exemption is the exemption for a "large US operating company." To qualify as a "large US operating company," the particular entity must have (i) 20 or more full time employees in the US, (ii) gross receipts or sales as reported in a federal income tax return of over $5 million, and (iii) an operating presence at a physical office within the US. Although it is not clear, it is likely that an entity that believes it is not subject to the CTA Reporting Company requirements may need to file something to claim that exemption.

The information that a Reporting Company must report includes the following: (i) the entity's name as well as any trade names and *dba* names; (ii) the entity's street address (not a P.O. Box); (iii) the jurisdiction in which the entity was formed; and (iv) the taxpayer identification number of the entity. If there is a change in any of that information, the Reporting Company must timely file an updated report.

As noted, information must also be reported regarding the entity's "Beneficial Owners." A Beneficial Owner is an individual who, directly or indirectly, through any contract, arrangement or understanding, exercises substantial control over the entity or owns or controls at least a 25% ownership interest in the entity. Ownership interests include equity, capital or profits interests. It appears that a "Beneficial Owner" is an *individual*, but based on various factors relating to control and/or ownership, it is possible that a trustee or a beneficiary of a trust could be a Beneficial Owner.

The information that must be provided in regard to each "Beneficial Owner" includes the following: (i) full legal name; (ii) date of birth; (iii) current residence address; (iv) an identification number (such as a driver's license number or passport number); and (v) a digital copy of the document showing the identification number.

For each new entity formed on or after January 1, 2024 (but not for entities in existence prior to that date), a Reporting Company must also disclose information regarding the "Company Applicant." The Company Applicant is an individual who is responsible for the creation of a reporting company through the filing of formation documents and the individual who directly submits the formation documents. In Texas, such formation documents would be filed with the Texas Secretary of State's office. With respect to each Company Applicant, the following information must be provided: (i) full legal name; (ii) date of birth; (iii) current residence address; (iv) an identification number (such as a driver's license number or passport number); and (v) a digital copy of the document showing the identification number.

Now here is the scary thing about the CTA: The penalties (i) for failure to file the required initial report, (ii) for failure to file a completely accurate report, (iii) for failure to correct an inaccurate report in a timely manner, (iv) for failure to file an updated report in a timely manner when reportable information changes, and (v) for failure to timely file a report when an entity loses its exemption (and other reporting failures) are severe: (i) $500 per day as a civil penalty (with no dollar cap) and (ii) $10,000 and/or imprisonment up to 2 years as a criminal penalty. It is possible that both penalties could apply to the same reporting failure. In addition, an entity can only make the required filing electronically (no paper filing). Of course, this requires the government to have a fully workable electronic reporting system up and running in 2024!

Holiday Season. The holiday season will soon be upon us. In the spirit of Thanksgiving, we want to thank our clients for allowing us the opportunity to help them with their probate and estate planning matters. We also want to thank all of the allied professionals with whom we work (financial advisors, trust officers, accountants, insurance advisors, etc.) for being part of the "team" assisting our mutual clients. And in the

spirit of Christmas, we want to wish you and your loved ones peace, joy and love, not only during the holiday season but in the New Year, too.

Contact us:

If you have any questions about the material in this publication, or if we can be of assistance to you or someone you know regarding estate planning or probate matters, feel free to contact us by phone (713-520-5205), fax (713-520-5235) or email sent to:

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ADDENDUM

THE FOUR TRANSFER METHODS

There are basically four methods for transferring assets at death. Three of those transfer methods are "non probate" transfer methods. Only one method is the "probate" transfer method.

In this summary, we are focusing solely on this question: **What is it that transfers the decedent's ownership interest in a particular asset *away from the decedent* upon his death?**

Subsequent transfers may occur pursuant to other transfer methods, but that is not what this summary is about. This summary is about the first transfer that occurs on the decedent's death. Decedent →

NOTE: Many people use multiple transfer methods to transfer various assets they own when they die. However, a significant portion of those people do not understand that, if they do that, their Will (or Revocable Trust) will not be the document that transfers *all* of their assets on their death. Thus, they "haphazardly" set up other transfer methods with respect to various assets they own that cause those assets to be distributed in a manner that is inconsistent with (and sometimes very detrimental to) their estate plan in their Will (or Revocable Trust). In addition, sometimes a single asset will be subject to more than one transfer method, which is fine if the person who arranges for that is aware of what that "double transfer" will involve and will lead to in terms of the new owner(s) of that asset.

Because a deceased person cannot own assets after he dies, his assets must be transferred to a new owner or owners (i.e., the beneficiaries) when he dies. That is why we sometimes refer to a Will or a Revocable Trust as the decedent's "estate planning vehicle." The decedent's assets are loaded into the vehicle and driven to the new owners as a result of his death. In our opinion, using a Will or Revocable Trust as the primary *estate planning vehicle* is the way for the decedent to create a "comprehensive" estate plan.

A. Transfers Pursuant to the Decedent's **Will**.

This is the only "probate transfer method" among the four transfer methods. This method applies solely to the "probate assets." The definition of *probate assets* is not helpful because it means assets distributable upon the decedent's death pursuant to the decedent's Will (if there is one).

(If an individual dies without a Will, that individual's *probate assets* will be distributed pursuant to the "intestacy statutes." All of our clients have Wills, so we will not spend any time in this summary discussing the Texas intestacy statutes. The intestacy statutes basically amount to a "Will" drafted by the Texas Legislature for individuals who own probate assets and die without a valid Will.)

Many people are "afraid" of probate. The probate process in Texas is quite simple compared to most other states. Some people mistakenly think that everything that must be done when a person dies is due to "probate" requirements, but that is not true. There are various matters that must be handled when someone dies, such as paying debts, final income taxes, estate taxes, funeral expenses, and administration expenses, income tax reporting, adjusting the tax basis of capital assets, filing an estate tax return, re-titling and distributing the assets, and trust funding, that are not part of the probate process. People do not like handling these matters, but "probate" cannot be blamed for any of these "post-death matters," which must be handled even if the probate process is skipped. In fact, these post-death matters are often easier to handle if there is an independent executor appointed as part of the probate process and a probate estate. Just remember this: if you *avoid probate*, you avoid everything provided for in your Will.

In trying to determine which assets are *probate assets*, it is often easier to start by evaluating the three non probate transfer methods to see which assets are being transferred pursuant to one of those transfer methods. That is because any asset not being transferred by one of the three non probate transfer methods is likely to be a probate asset by default.

B. <u>Transfers Pursuant to a **Revocable Trust** (a/k/a "Living Trust")</u>.

When we indicate that this is one of the four transfer methods, we are focusing on which particular transfer method moves the asset away from where it is at the time of the decedent's death. Therefore, in the case of a Revocable Trust, we are referring to the particular assets already titled in the name of the decedent's Revocable Trust at the time of the decedent's death*.* The assets held in a revocable trust are deemed to be owned by the decedent himself because a revocable trust is a grantor trust for federal income tax purposes. Thus, as to the assets already titled in the name of the decedent's Revocable Trust when the decedent dies, the primary estate planning vehicle is the Trust Agreement or Trust Declaration ("trust instrument") that created the Revocable Trust. (For simplicity, we will sometimes refer to a "Revocable Trust" as if it were the same as the trust instrument that created the Revocable Trust.)

If the decedent created a Revocable Trust with the intent of his Revocable Trust being his primary *estate planning vehicle*, but the decedent owned one or more *probate assets* (*see* A above) at the time of his death, then the initial transfer method that will transfer the decedent's probate assets away from the decedent when he dies will be the decedent's Will and not the decedent's Revocable Trust. The Revocable Trust would be the subsequent (or, secondary) transfer method in that case. All clients who create a Revocable Trust always need to have a Will in addition to a trust instrument, which, in the case where the Revocable Trust is intended to be the primary *estate planning vehicle*, will be a type of Will called a "pour-over Will." A *pour-over Will* basically does only two things: (i) appoints an Independent Executor and (ii) distributes the decedent's *probate assets* to the Trustee of the decedent's Revocable Trust, for further administration and distribution pursuant to the terms of the trust instrument that created the decedent's Revocable Trust. Thus, in a case where the decedent owns both probate assets and Revocable Trust assets at the time of his death, both of the transfer methods discussed in A and B will apply.

COMMENT: Both a Will and a Revocable Trust have significant advantages over the remaining two transfer methods. Those advantages include, but are not limited to, the following: (i) the ability to create

a highly customized estate plan; (ii) the ability to do extensive tax planning (i.e., use self-adjusting tax formulas and create various types of trusts to avoid, reduce or defer estate taxes); (iii) the ability to address multiple contingencies in advance; (iv) the ability to create many different types of trusts for multiple beneficiaries for various reasons; (v) the ability to provide for numerous specific gifts (both cash gifts and gifts of tangible personal property); and (vi) basically, no "restrictions" on the owner's desired disposition of his/her assets.

C. Transfers Pursuant to a **Beneficiary Designation Form**.

This transfer method applies to the "beneficiary designation assets" titled in the decedent's name at the time of his death, of which there are only four (4) "true" types (in our opinion):

(i) Life Insurance (whether individually owned or provided by an employer or former employer).

(ii) Employee Benefit Plans (such as 401(k) plans, 403(b) plans, and profit-sharing plans).

(iii) IRAs (such as traditional IRAs, Roth IRAs, IRA rollovers, SEP IRAs and Simple IRAs).

(iv) Annuities.

The reason we refer to the above four assets as the only "true" *beneficiary designation assets* is because the beneficiary designation is the *only* transfer method for *true* beneficiary designation assets. In other words, the titled owner of these particular assets is *required* to complete and submit a beneficiary designation "form" (whether paper or electronic) for these assets to the applicable financial institution (i.e., the insurance company in the case of a commercial annuity or life insurance policy, the custodian or trustee of the IRA or the administrator of the employee benefit plan). If the titled owner fails to submit a beneficiary designation form for a particular beneficiary designation asset (or if all beneficiaries named in his beneficiary designation form predecease him), then one or more "default beneficiaries" (established by the particular financial institution in the legally applicable documents) will be entitled to receive that beneficiary designation asset when the decedent dies. In some of those cases, the *default beneficiary* will be the decedent's *estate*. In those cases, the default beneficiary per the applicable documentation moves the beneficiary designation asset from the decedent to the decedent's estate and, after that, the decedent's Will takes over (assuming there is one) in regard to the ultimate distribution of that asset. That would be an example of two different transfer methods being involved with respect to a single asset. Or, the owner of a beneficiary designation asset might name his Revocable Trust as the beneficiary of that asset in his beneficiary designation form. That is another example of two different transfer methods being involved with respect to a single asset.

It is not possible to avoid completing and submitting beneficiary designation forms for beneficiary designation assets because that is the sole transfer method for these particular assets. However, it is vitally important that owners of beneficiary designation assets spend as much time completing beneficiary designation forms as they spend designing their estate plan in their Will or Revocable Trust because each beneficiary designation form is like a "mini-Will" for that particular beneficiary designation asset.

D. Transfers Pursuant to a **"Non Probate Multi-Party Arrangement".**

There are many assets and accounts that an individual can own that are not *true* "beneficiary designation assets" (*see* C above, which discusses the assets we believe are the only *true* "beneficiary designation assets"). If an asset or account is not a *true* "beneficiary designation asset," there is no requirement that

a beneficiary be placed on that asset or account. Yet, more and more people are placing beneficiaries on *all* of their accounts and other assets and/or using the type of arrangements that come within this category. We will refer to this fourth transfer method as "Non Probate Multi-Party Arrangements." Assets and accounts that are not "true" beneficiary designation assets (*see* C above) can just as easily be transferred by another transfer method, such as a Will (*see* A above) or a Revocable Trust (*see* B above).

This fourth transfer method is based on the legal effect of the way the particular asset or account was "titled" or "registered" as of the decedent's date of death. The "title" of an account or other asset refers to more than the names of the individuals included on the account or in the title. The "title" includes certain words that have a specific legal meaning. In other words, the particular form of "title" or "registration" or the particular "arrangement" applicable to the account or other asset determines the distribution of the account or asset when the decedent dies. This transfer method is frequently used with bank and brokerage accounts (excluding accounts that are IRAs, which are in the beneficiary designation category discussed in C above), marketable securities and other investments and, sometimes, real property. Some of these forms of title and arrangements have been referred to as the "poor man's Will."

Below are some examples of the forms of title/registration or other arrangements that can be used on these assets and accounts (there are additional forms of title and arrangements in this category that are not listed below).

i. An account or other asset titled in the names of two or more individuals as "Joint Tenants with Right of Survivorship" (often abbreviated "JTWROS" or "JT TEN").

ii. An account or other asset titled in the names of two or more individuals as a "Multi-Party Account with Right of Survivorship."

iii. An account or other asset that is set up to have a "Pay on Death" ("POD") arrangement (i.e., the account or other asset will be paid on the decedent's death to the named POD beneficiaries).

iv. An account or other asset that is set up to have a "Transfer on Death" ("TOD") arrangement (i.e., the account or other asset will be paid on the decedent's death to the named TOD beneficiaries).

(Sometimes more than one of the above forms of title and arrangements is used on a single account or asset.)

Again, all of these forms of title and arrangements legally dictate how the account or other asset is transferred when the original owner dies.

More and more people are using Non Probate Multi-Party Arrangements these days, even though that is just one of the transfer methods that could be used. These arrangements can provide for a quicker transfer on the decedent's death. However, overuse of this method and, especially, use of this method in a "willy nilly" fashion can lead to disruptions of the decedent's intended estate plan, as set out in the decedent's primary *estate planning vehicle* (i.e., his Will or his Revocable Trust). In fact, in some cases, use of this transfer method can totally destroy the decedent's estate plan in his Will or Revocable Trust. This transfer method is actually a very "risky" transfer method that should not be used unless all aspects of the particular transfer method have been fully evaluated and it has been determined that using this transfer method will not interfere with achievement of the decedent's intended estate plan.